

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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FREE SPEECH COALITION,)	
INC. et al.,)	
)	
Plaintiffs,)	
)	Civil Action No.:
vs.)	2:09-4607
)	
THE HONORABLE ERIC H.)	
HOLDER, JR., Attorney)	
General,)	
)	
Defendant.)	
_____)	

DEPOSITION OF JEFFREY J. DOUGLAS, at the
U.S. Department of Justice Federal
Building, 300 North Los Angeles Street,
Room 7516, Los Angeles, California 90012,
commencing at 8:47 a.m., Tuesday,
April 9, 2013, before Elida Reyes, RPR,
CSR No. 13547.

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1 A I was selected to be on the board in '94 or '95.
2 The organization formed in '91, and since then I've been
3 the chair of the board of directors except for one year.
4 I don't recall what year that was.

5 Q What does that role entail?

6 A The organization evolved and has grown
7 substantially. So when we began, we had just one
8 administrative person that sent out the bills and made
9 sure the rent was paid, and so at that -- in that era, all
10 the work was done by the directors. We determined what
11 were the needs of the industry. We prioritized them and
12 then decided which of those in priority we were capable of
13 addressing, and then we started at the top of the list and
14 started working down. But as a volunteer organization
15 where everyone involved had full-time employment, there
16 was only so much that could be done.

17 As the years passed in the organization and the
18 industry matured hand in hand, we were ultimately able to
19 get professional staff. And so my role has changed from
20 being involved in the day-to-day operations of the
21 organization to the more comfortable role as helping to
22 set policy.

23 Q When did the organization get professional staff?

24 A We hired our first executive director probably in
25 '98, roughly '99, and we have had three since. There was

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1 A Yes.

2 Q Would such entities or individuals qualify as
3 primary producers or secondary producers or both?

4 A Could be either or both.

5 Q Depending on whether the material they're
6 uploading is material they've created?

7 A Yes.

8 Q Is there any type of activity, for example,
9 creating digital films or creating videos or creating
10 print images that is more common amongst Free Speech
11 Coalition members than others?

12 A I would think that Free Speech Coalition fairly
13 represents the market, and in the market more -- the
14 majority of images are created electronically for
15 electronic distribution than for tangible distribution.

16 Q Is the --

17 A Don't mind me.

18 Q Free Speech Coalition, for purposes of this case,
19 has identified a certain number of entities or individuals
20 as members; correct?

21 A I believe so.

22 Q Those include David Connors, Marie Levine, the
23 Sinclair Institute or Townsend Enterprises; correct?

24 A Yes.

25 Q And those are Vivid Video Pictures, Wicked

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1 Picture, Diabolic, Darkside, and K-Beech. Are there any
2 other entities or individuals that Free Speech Coalition
3 has identified as members?

4 A Not that I know of. I'm not certain.

5 Q Who would know?

6 A Counsel.

7 Q So are you relying on her -- on counsel?

8 A My answer to your question is from what I recall
9 from documents that I've seen.

10 Q Are you familiar with all of the entities or
11 individuals that I've mentioned?

12 A To a great or lesser extent. I've known Marie
13 Levine for a very long time, 25 years. Dave for more than
14 15. Darkside, I don't think I've ever talked with anyone
15 involved with Darkside. Vivid and Wicked, I've known
16 since their creation. I've represented them
17 intermittently. K-Beech has spoken to me over the phone
18 half a dozen times. Other ones?

19 MS. BAUMGARDNER: Sinclair Institute.

20 THE WITNESS: Sinclair Institute -- I'm aware of
21 them. I've done work -- I've not done work directly for
22 Sinclair.

23 BY MS. WYER:

24 Q And Darkside? Did we talk about that?

25 A I simply know of their existence, but as far as I

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1 electronically and through DVD.

2 Q Are all of these Free Speech Coalition members
3 that I mentioned in the category of manufacturer under --
4 as a Free Speech Coalition member?

5 A I don't think Marie Levine is, but I believe the
6 others are.

7 Q What category was Marie Levine in?

8 A Certainly performing artist. And if you're in
9 one category, you don't have to be in multiple. I believe
10 she directs. She may even produce. Pretty sure she
11 produces. You know, I wouldn't bet a hundred dollars on
12 it, but my belief is she produces. But I'm not certain
13 about that. But I believe her membership is as an
14 actress.

15 Q Do you have any list of members who create images
16 subject to the 2257 requirements?

17 A I can't imagine why we would.

18 MS. BAUMGARDNER: I'm sorry. Would you repeat
19 that question again?

20 BY MS. WYER:

21 Q Do you or does Free Speech Coalition have a list
22 of Free Speech Coalition members who produce materials
23 subject to the 2257 requirements?

24 MS. BAUMGARDNER: Thank you.

25 THE WITNESS: No, I do not. And I cannot imagine

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1 keeping option; correct?

2 A Yes. You do see the complete inapplicability
3 of -- I'll strike that. It's not complete
4 inapplicability. The burden associated with third-party
5 record keeping in this context where there is not a
6 licensed entity that there are standard requirements for.
7 If the business, as in the hypothetical described, is
8 operating off hours and wishes to designate a third-party
9 record keeper that is available 20 hours a week as such
10 under the current regs no provision for anything other
11 than absolute liability and all of the other issues that I
12 raised previously which become what to me is an
13 unsurmountable burden. If the third-party record keeper
14 goes out of business, I must then go out of business if
15 there is not a mechanism for me to have reconveyed to me
16 records. If there's no structure available to protect me
17 from that, then third-party record keeping becomes
18 extremely difficult.

19 The ideal thing to do again is to just simply say
20 we want to inspect you and then make an appointment for an
21 inspection to occur. It's not like a search warrant
22 execution for contraband where, if you tell someone in
23 advance, they'll flush the contraband. This is not a
24 question of contraband. This is a question of records
25 existing or not existing. And if by some bizarre super

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1 effort a company that did not have adequate records was
2 able to create the adequate records in the five days or
3 three days period prior to inspection, the world would be
4 a better place because at the end of the inspection the
5 person will be in compliance with the law. If the goal is
6 to trap someone, then doing what you're doing by not
7 having announced inspection makes some sense. But that's
8 inconsistent with everything that is said about the
9 purpose of the legislation. The purpose of the
10 legislation is to deter and detect child pornography.

11 Q This comment here does not indicate that
12 third-party record keepers would have to be licensed in
13 order to eliminate the problem identified in this section;
14 correct?

15 A That is correct. I believe that the value of
16 third-party record keeping is described elsewhere, and to
17 avoid redundancy, we don't use the same thing every time
18 we use the phrase third-party record keeping. And as I've
19 said, with the experience that followed the enunciation of
20 the final promulgation of the final regulations when we
21 put together as a whole the practical difficulty of
22 third-party record keeping has become self-evident or
23 evident.

24 Q You've used the term absolute liability to
25 describe your understanding of the liability that a

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1 REPORTER'S CERTIFICATE

2 I, ELIDA REYES, Certified Shorthand Reporter in
3 and for the State of California, License No. 13547, hereby
4 certify that the deponent was by me first duly sworn and
5 the foregoing testimony was reported by me and was
6 thereafter transcribed with computed-aided transcription;
7 that the foregoing is a full, complete, and true record of
8 said proceedings.

9 I further certify that I am not of counsel or
10 attorney for either or any of the parties in the foregoing
11 proceedings and caption named or in any way interested in
12 the outcome of the cause in said caption.

13 The dismantling, unsealing, or unbinding of the
14 original transcript will render the reporter's certificate
15 null and void.

16 In witness whereof, I have hereunto set my hand
17 this day: _____, 2013.

18

19 ☐ Reading and Signing was requested.

20 ☐ Reading and Signing was waived.

21 ☒ Reading and Signing was not requested.

22

23

24 _____
Elida Reyes, CSR No. 13547

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